

MICHIGAN CORPORATION AND SECURITIES BUREAU

RELEASE NO. 96-2-S

TO: ALL INTERESTED PARTIES

SUBJECT: Section 402(b)(11)

General Background

Section 402(b)(11) provides a transactional exemption for the following:

Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if either of the following occurs:

(A) commission, other than a standby commission, is not paid or given directly or indirectly for soliciting any security holder in this state and the offer is made either to holders of convertible securities or warrants and relates to the underlying security, or the securities are purchased by not more than 25 security holders in this state within a 12-month period.

(B) Twenty business days before any offer, the issuer files with the administrator the offering circular or other material proposed to be sent to security holders and other persons describing the terms of the offer together with the filing fee of \$100 and the administrator does not by order disallow the transaction within the next 20 business days.

The question has arisen whether the holder of transferable warrants exercisable within not more than 90 days of their issuance must make a filing and pay a fee pursuant to Section 402(b)(11)(B), if no commissions are paid, but the securities are purchased by greater than 25 security holders in this state within a 12-month period.

Action or Interpretation

It is the position of the Bureau that a person who at the time of the transaction is the holder of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than 90 days of their issuance, and where no commission, other than a standby commission, is being paid, but the securities are purchased by greater than 25 security holders in this state within a 12-month period, no filing will be necessary in order to claim this exemption.

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In Release No. 88-3-S the Bureau interpreted "existing security holders" as used in Section 402(b)(11) of the Act to include the holders of nontransferable rights or transferable rights exercisable within not more than 90 days of their issuance. The Bureau will treat rights and warrants the same for the purpose of this Release.

Authority

Act 265 of 1964, Section 402(b)(11).

Signed by Carl L. Tyson, Director
Corporation and Securities Bureau

Dated: March 12, 1996